

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LYNNE THOMPSON,)	
)	
Petitioner,)	
)	Civil Action No. 12-1415
vs.)	
)	Judge Terrence F. McVerry/
COMMONWEALTH OF PA, c/o Court)	Magistrate Judge Maureen P. Kelly
Of Common Pleas,)	
)	
Respondent.)	

MEMORANDUM ORDER

The above-captioned pro se Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person In State Custody was received by the Clerk of Court (the “Petition”) on October 1, 2012, and was referred to Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Civil Rules 72.C and D.

Magistrate Judge Kelly’s Report and Recommendation, ECF No. 8, filed on November 19, 2011, recommended that the case be dismissed prior to service because Petitioner had a currently pending PCRA petition in the Court of Common Pleas attacking the very conviction that was subject of the Petition. Service of the Report was made on the Petitioner at her address of record. Petitioner was informed that, in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and the local rules, she had a specific period of time in which to file her objections. Petitioner timely filed objections. ECF No. 10.

In those objections, Petitioner claims that the trial court judge who also is presiding over Petitioner’s PCRA proceedings is not following the law and so, “State Court remedies have been exhausted and no relief is going to be forthcoming.” ECF No. 10 at 14. It appears as if Petitioner is arguing that because the PCRA trial court judge is not going to grant relief, either

she need not exhaust her state court remedies because to do so would be futile or, that she has in fact, exhausted her state court remedies because the PCRA trial court judge will deny her relief. In either case, she fails to address the fact, as the Report correctly notes, that she must file an appeal to the Pennsylvania Superior Court if she is denied relief by the PCRA trial court judge and that, until the Superior Court decides any such appeal, Petitioner has not exhausted her state court remedies. Accordingly, her objections are OVERRULED.

Accordingly, after *de novo* review of the pleadings and the documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 10th day of December, 2012,

IT IS HEREBY ORDERED that the case is dismissed pre-service because Petitioner has failed to exhaust her state court remedies.

IT IS FURTHER ORDERED that the Report and Recommendation, ECF No. 8, filed on November 19, 2012, by Magistrate Judge Kelly, is adopted as the opinion of the Court. A certificate of appealability is DENIED as jurists of reason would not disagree with the procedural holding that Petitioner has failed to exhaust her state court remedies.

All pending Motions are hereby DENIED as moot. The Clerk is to mark the case closed.

s/Terrence F. McVerry
U.S. District Judge

cc: The Honorable Maureen P. Kelly
United States Magistrate Judge

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